TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 232.

DULUTH & SUPERIOR BRIDGE COMPANY, APPELLANT,

vs.

STEAMER "TROY," HER BOILERS, ENGINES, &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

FILED FEBRUARY 16, 1907.

(20,575.)

(20,575.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 232.

DULUTH & SUPERIOR BRIDGE COMPANY, APPELLANT,

vs.

STEAMER "TROY," HER BOILERS, ENGINES, &c.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

INDEX.

	Original.	Print.
Caption	1	1
Libel	2	1
Libelant's stipulation	7	5
Attachment	8	6
Exceptions and answer	10	7
Decree	15	10
Petition for appeal	15	11
Order allowing appeal	16	11
Certificate of question of jurisdiction	17	12
Clerk's certificate	19	12
Appeal bond	21	13

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 11, 1907.

1 District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY, Libelant,
vs.
STEAMER "TROY," HER BOILERS, ENGINES, ETC., Respondent.

Messrs. J. A. Murphy and C. E. Kremer, Proctors for Libelant.
Messrs. Goulder, Holding & Masten, Hoyt, Dustin & Kelley and H. R. Spencer, Proctors for Respondent.

2 District Court of the United States for the Western District of Wisconsin.

At the term of the District Court of the United States of America, for the Western District of Wisconsin, begun and held at the City of Madison, in said district, on the first Tuesday of December, A. D. 1906.

Sanborn, J.

Among other the following proceedings were had, to wit:

DULUTH & SUPERIOR BRIDGE COMPANY, Libelant,
vs.
STEAMER "TROY," HER BOILERS, ENGINES, ETC., Respondent.

Be it remembered, that heretofore, to wit: on the fourth day of September, in the year of our Lord one thousand nine hundred and six, came the said Duluth & Superior Bridge Company, by Messrs. J. A. Murphy and C. E. Kremer, its proctors, and filed in the office of the clerk of the District Court of the United States for the Western District of Wisconsin, its libel, as follows, to wit:

UNITED STATES OF AMERICA *Western District of Wisconsin:*

In the District Court of the United States.

To the Honorable Arthur L. Sanborn, Judge of the District Court for the Western District of Wisconsin:

The Libel of the Duluth and Superior Bridge Company, a corporation duly organized and existing under the laws of the state of Wisconsin, exhibits this, its libel, against the Steamer Troy, her boilers, engine, boats, tackle, apparel and furniture in a cause of collision, civil and maritime, and alleges as follows, to wit:

First. That at the different times hereafter mentioned, libelant was the sole owner and in possession and control of a certain draw bridge erected across the St. Louis river from Conners Point in the City of Superior, Wisconsin, to Rice Point, in the City of Duluth, Minnesota.

3 Second. That the said St. Louis river is a navigable waterway, and the said bridge was erected in compliance with the provisions of an Act of the Congress of the United States and in conformity with the requirements of the War Department.

Third. That the said bridge is a structure built of steel and resting on permanent piers built in the river, with its shore ends resting on stone or concrete abutments. That there are two permanent spans, each 220 feet long, and one draw span 460 feet long.

Fourth. That the said draw span is placed upon a turntable, and this rests upon a base built of stone and placed upon many submerged wooden spiles driven into the bottom of the river. Upon the turntable of the said draw span, there is all necessary machinery and such appliances that the said draw span can be readily swung around, making an opening up and down the river, leaving channels 200 feet in width on each side of the bridge when open for the passage of vessels. When open, the bridge is guarded or protected by rows of piles up and down the river for a width of sixty feet, and a length of 500 feet. On the channel side of this protection, pieces of timber are fastened as fenders to protect the spiles of the protection, and to prevent injury to vessels passing through the bridge. The bridge is known as a center swing bridge, and when closed, its ends rest on permanent abutments and piers so that street cars, teams and all kinds of vehicles and passengers can cross the same between Duluth and Superior.

Fifth. That on the morning of the 11th day of August, 1906, at a few minutes before one o'clock, the draw span was in charge of a competent, experiences and skilled engineer, the machinery and appliances in use on the said bridge for swinging and opening the same were in good working order, and the electric power was available and ready in sufficient volume to operate and swing the bridge whenever required. The lights required by law were in their proper places and burning brightly. At the time above mentioned both the engineers and the toll gatherer in libelant's employ on the bridge heard the signal whistle of a steamer which afterwards proved to be the Steamer Troy, at a point some distance below the bridge and coming from Duluth. Promptly upon hearing this signal the engineer of the bridge gave a signal by an electric bell to the toll gatherer to close the gates at the approaches to the
4 draw of the bridge for the purpose of stopping the cars and other traffic from coming on to the draw from either side. The toll gatherer had already anticipated the signal of the engineer and had shut the gates on the Duluth side of the bridge, and when signalled by the engineer was on his way to the Superior end of the bridge; these gates, too, he promptly shut and started rapidly to return to the Duluth end of the draw, and while doing so the bridge began to swing with the Superior end up-stream, as the steamer seemed to be bound for Docks at Superior. So soon did the bridge begin to swing after the toll gatherer had shut the Superior gates that he was compelled to run toward the Duluth end in order to get off there before the bridge was opened clear of the abutment. The Troy when she signalled for the bridge was running unusually

and unnecessarily fast, and so continued to, and without checking her speed came on and close to the bridge before it could be opened fully and then blowing short blasts of the whistle came on with considerable headway and swinging to starboard, struck the fender on the center protection of the bridge just below the bridge and glancing along this, struck the bridge which was then well clear of the shore abutment and still swinging rapidly away from the steamer. So great was the headway of the steamer and so heavy the blow that it seemed to lift the bridge and give it a twist, so that it buckled the parts in the center bending and breaking the bridge and both ends fell into the stream and channel almost entirely obstructing the same for the passage of all larger vessels.

Sixth. That immediately after the collision, the steamer backed away from the bridge, and lying some 500 feet away for half an hour, no effort was made by the master or crew to send assistance to any persons that might be injured and helpless among the ruins and wreck of the bridge, although there was nothing to prevent them from so doing.

Seventh. From the time the Troy signalled to the bridge, the latter and its lights were in plain view of those in charge of her navigation, and whether the same was opening or not could be readily seen from the Troy, because it was moonlight and the atmosphere was clear, and there was nothing in the way of the Troy or near her that made her navigation difficult or hazardous, or which would prevent her if navigated with skill and care from approaching the bridge in such a manner as to avoid colliding with and injuring it.

5 Eighth. That from the time the Troy blew her signal for the bridge to open, and until she collided with it, every step was promptly taken to open it as expeditiously as possible, and there was no delay or time lost in any of the operations necessary to open the said bridge for the Troy's passage through the same, the signals of the Troy were heard and promptly obeyed and nothing was left undone to promote her speedy passage; yet so recklessly and negligently was she managed and navigated that she came on with unreasonable, unnecessary and unusual speed, until it was too late to stop her headway and prevent her from colliding with the bridge.

Ninth. That libelant is not fully informed and does not now know all the faults that the said steamer and those navigating her were guilty of, and therefore, is unable to enumerate and set the same out in this libel, and it, therefore, reserves the right, should other faults than those herein alleged be discovered on the hearing of this cause, to charge and urge the same. Libelant charges that those in charge of the navigation of the said steamer were at fault among other things:

(1) In not having on duty and at his post on said steamer a vigilant and competent look-out.

(2) In running at too high a rate of speed when the signal for the opening of the bridge was given.

(3) In approaching the bridge at too great a rate of speed.

(4) In not checking the speed of the steamer as she approached the bridge.

(5) In not checking and if necessary stopping the headway of the steamer before she approached too close to the bridge.

(6) In not waiting until the bridge was entirely opened before she attempted to pass through the same.

Tenth. That by reason of the said collision and the dropping of the said bridge into the river, it was broken, twisted and greatly damaged, and it will require the expenditure of large sums of money to raise the wreck and repair and replace the bridge and maintain watch over same during rebuilding period, during all of which time libelant will lose the use of the same and the tolls which it would earn in its use. That in order not to delay the many vessels
6 and their cargoes which were then above the said bridge bound to points below the bridge, and to enable vessels and cargoes which were bound to points above the said bridge to proceed, it became and was necessary, and libelants *were* bound to and did expend a large sum of money in removing the adjoining permanent span to the north of the said broken draw, and providing a place where the same could be safely placed until it could be replaced. That by reason of the foregoing, libelant has sustained damage in the sum of One hundred fifty five thousand six hundred dollars.

Eleventh. That libelant is informed and believes that the owner and master of the said steamer Troy deny all liability for the damage done to the said bridge.

Twelfth. That the said steamer Troy is now at the port of Superior, and within the admiralty and maritime jurisdiction of this court.

Wherefore, libelant prays that process in due form of law may issue against the said steamer Troy, her engines, boilers, machinery, boats, tackle, apparel and furniture, and this court would be pleased to pronounce for libelant's above demand and decree the same paid with interests and costs and that the said steamer may be condemned and sold to pay the same, and for such other and further relief and redress as in law and justice it may be entitled to receive.

DULUTH & SUPERIOR BRIDGE CO.,
By C. E. KREMER, *Proctor.*

J. A. MURPHY,
C. E. KREMER,
Proctors.

STATE OF WISCONSIN, *County of Douglas, ss:*

On this 1st day of September, A. D. 1906, before me personally appeared D. M. Philbin, an agent and officer, to wit, superintendent of the libelant, who was sworn to the truth of the foregoing libel.

[L. S.] ANNA M. PALMER,
Notary Public, Douglas Co., Wis.

Indorsed: No. 36 A. District Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Steamer Troy. Filed Sep. 4, 1906. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, Superior,
7 Wis. Proctor- for Libelant.

And on same day, to wit, September 4, 1906, came the said Duluth & Superior Bridge Company, by its said proctors, J. A. Murphy and C. E. Kremer, and filed Libelant's Stipulation, as follows, to wit:

Libelant's Stipulation.

UNITED STATES OF AMERICA, *Western District of Wisconsin, ss:*

United States District Court, Special June Term, A. D. 1906.

Whereas, a Libel was filed in this Court on the 4th day of September, A. D. 1906, by the Duluth and Superior Bridge Company against the Steamer Troy, her boilers, engines, machinery, boats, tackle, apparel and furniture, for the reasons and causes in said libel mentioned, and praying that the same may be condemned, and sold to answer the prayer of the libelant; and the said libelant and D. M. Philbin and J. P. Dooley sureties, the parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the libelant, or its sureties, execution may issue against their goods, chattels, and lands for the sum of two hundred and fifty dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned shall be, and are, bound in the sum of two hundred and fifty dollars, conditioned that the libelants above named shall pay all such costs as shall be awarded against it by this Court, or, in case of appeal, by the Appellate Court.

DULUTH & SUPERIOR BRIDGE CO.,
By C. E. KREMER, *Proctor*.
J. P. DOOLEY.
D. M. PHILBIN.

Taken and acknowledged this 1st day of Sept., A. D. 1906, before me.

[L. S.] ANNA M. PALMER,
Notary Public, Wis.

STATE OF WISCONSIN, *County of Douglas:*

J. P. Dooley and D. M. Philbin, party to the above stipula-
8 tion, being duly sworn, deposes and says that *he* resides in the Western District of Wisconsin, and *is* worth the sum of five hundred dollars over and above all *his* debts and liabilities.

D. M. PHILBIN.
J. P. DOOLEY.

Sworn this 1st day of September, A. D. 1906, before me.

[L. S.] ANNA M. PALMER,
Notary Public, Wis.

Sworn — this 1st day of September A. D. 1906 before me.

[L. S.] ANNA M. PALMER,
Notary Public, Wis.

Indorsed: No. 36. District Court United States, Western District of Wisconsin. In Admiralty. Duluth and Superior Bridge Company *vs.* Steamer Troy. Libelant's Stipulation. Filed Sep. 4, 1906. F. W. Oakley, Clerk.

Whereupon, on same day, to wit, September 4, 1906, attachment issued, as follows, to wit:

District Court of the United States for the Western District of Wisconsin, *ss:*

The President of the United States of America to the Marshal of the Western District of Wisconsin, Greeting:

Whereas, A Libel hath been filed in the District Court of the United States for the Western District of Wisconsin, on the fourth day of September in the year of our Lord one thousand nine hundred and six by the Duluth and Superior Bridge Company, a corporation, against the Steamer Troy, her boilers, engine, boats, tackle, apparel and furniture, in a cause of collision, civil and maritime, for the reasons and causes in the said Libel alleged and mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said Steamer Troy, her tackle, etc., may be cited in general and special to answer the premises, and all proceedings being had that the said Steamer Troy, her tackle, etc., may, for the causes in the said Libel mentioned, be condemned and sold to pay the demands of the Libelant.

You are Therefore Hereby Commanded, To Attach the said Steamer Troy, her boats, tackle, etc., and to detain the same
9 in your custody until the further order of the said Court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said Libel, that they be and appear before the said Court, to be held at Madison in and for said Western District of Wisconsin, on Monday, the 1st day of October next, at 10 o'clock of the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ:

Witness, the Honorable Arthur L. Sanborn, Judge of the District Court of the United States, for the Western District of Wisconsin, at the District Court Room, in the City of Madison, in the said District, this fourth day of September in the year of our Lord one thousand nine hundred and six and of the Independence of the United States of America the one hundred and thirty-first.

[L. S.] F. W. OAKLEY, *Clerk.*

Afterwards said writ was returned served, as follows:

WESTERN DISTRICT OF WISCONSIN, *ss:*

I hereby certify and return, that by virtue of the within writ, I did on the fifth day of September A. D. 1906, seize the within named Steamer Troy, her Boilers, Engines, Boats, Tackle, Apparel and Furniture, at Superior, Wis., and now have the same in custody, to await the further order of the Court in the premises.

CHAS. LEWISTON, *Marshal,*
By W. T. PUGH, *Deputy.*

Indorsed: Admiralty A. #36. District Court of the United States for the Western District of Wisconsin. In Admiralty. Attachment. Duluth & Superior Bridge Co. *vs.* Steamer Troy. Filed Sep. 8, 1906. F. W. Oakley, Clerk. J. A. Murphy and C. E. Kremer, Libelant's Proctors, Superior, Wis.

10 Afterwards, to wit, November 15, 1906, came the Western Transit Company, a corporation, as owner of the Steamer "Troy," her boilers, engines, etc., by Messrs. Goulder, Holding & Masten, its proctors, and files its Exceptions and Answer, as follows, to wit:

In the District Court of the United States for the Western District of Wisconsin. In Admiralty.

No. —.

DULUTH & SUPERIOR BRIDGE COMPANY, Libelant,
vs.
STEAMER "TROY," HER BOILERS, ENGINES, ETC., Respondent.

Exceptions and Answer.

To the Honorable Arthur L. Sanborn, Judge of the District Court of the United States for said District:

The Exceptions and Answer of The Western Transit Company, a corporation, as owner of the Steamer "Troy," her boilers, engines, etc., to the libel filed on the admiralty side of this Court of the Duluth & Superior Bridge Company against the same, in a cause of collision, shows and propounds:

I. Your respondent avers that it is and at the times mentioned in the libel was sole owner of the said Steamer Troy, her boilers, engines, etc., which said steamer was a maritime vessel of the United States, engaged in the business of commerce and navigation upon the public and navigable waters of the United States, including the waters of the St. Louis River, referred to in the libel.

Exceptions.

II. Your respondent excepts to said libel as insufficient and as not propounding facts sufficient to constitute a cause of action against

the said steamer within the jurisdiction of this Court on the grounds following:

11 1st. That it appears from the averments of the libel that the bridge alleged to have been injured was a structure on land, for purposes of land travel and convenience exclusively, not erected, maintained or operated in any sense or in any degree in aid of navigation, but, on the contrary, an obstruction and impediment to the navigation of a public navigable water channel and highway, a part of the public waters of the United States, then and there navigable to ships engaged in commerce and navigation.

2nd. That whatever of damage came to the bridge occurred on land, and no part of the same occurred or was suffered on water in place or manner within the jurisdiction of an admiralty court of the United States.

3rd. That the claim of damage propounded in the libel fails to show a case within the admiralty jurisdiction of this Honorable Court according to the grant of such jurisdiction in the Constitution of the United States and the course and practice in admiralty courts of the United States.

Answer.

III. Without in any manner waiving the foregoing exceptions and objections to the jurisdiction of the court, but respectfully insisting, respondent makes answer to the libel as follows:

It has no knowledge concerning the allegations of the first and second articles of the libel, except that the said St. Louis River is a navigable waterway, and so as to all of the other allegations in the first and second articles denies the same.

IV. Respondent believes the allegations of Articles Third and Fourth to be substantially correct as alleged, but, being without knowledge of the specific details therein alleged, denies the

12 same.

V. Touching the allegations of Articles Fifth, Sixth, Seventh and Eighth, respondent says that they are for the most part falsely alleged, and denies each and every allegation contained in those articles except as they may hereinafter be specifically admitted to be true, and avers that the true facts are as follows, and not otherwise:

Having left the port of Buffalo on the 6th of August, 1906, with a cargo of miscellaneous package freight, the Troy reached the port of Duluth on the 10th of August, where she discharged cargo at different docks, and about 1:25 A. M., (Eastern Standard Time) August 11th, left the City dock in Duluth, having on board upwards of four hundred (400) tons of cargo destined for the Minnesota dock above the bridge referred to in the libel. Then and at all times referred to in the libel and in this answer, the Troy was stout, staunch, strong, in every respect properly and sufficiently equipped and furnished, had the usual and proper complement of officers and

crew, properly stationed, attentive to their duties and to the safe navigation of said steamer, and displayed the signal lights required by law, properly lighted, properly placed and burning and showing brightly. While proceeding at checked speed, and a usual and proper speed, still a long way from the bridge, in a usual and proper manner and place, the Troy gave the proper signal with her steam whistle for the opening of the bridge. The night was clear, her lights could be seen, the signal was distinctly sounded and she should have been heard by an attentive watch on the bridge. There was ample time and opportunity for the bridge to be opened in due and regular course, and with proper attention and ordinary management it should have been opened for the passage of the Troy in accordance with ordinary practice, and so turn in such manner that the part covering the draw, to go through which the steamer's course was directed, would swing away from the steamer as she came
13 up to make the passage.

On this occasion the watch or crew on the bridge was insufficient in number and grossly inattentive to their duties and negligent therein, so that although the Troy was approaching in ordinary and usual manner at slow speed, directing her course to take the port draw, with efficient watch to see any signal indicating that the bridge would not be duly opened or that its opening would be delayed beyond the ordinary practice, those operating said bridge, without displaying any signal, but inviting the Troy to come on until she had approached to a point where the bridge should have begun to open, by reason of their gross negligence had not started to open the bridge, whereupon the Troy, blowing an alarm signal and hailing at the same time, reversed her engine full speed astern, the effect of which backing, while it was stopping her headway at the same time threw her bow toward and against the center abutment, and, before her headway could be entirely stopped, she forged up against the bridge, still across and obstructing the draw, although opening at the time, with sufficient momentum to so disturb its bearings that it buckled and went down, the ship herself sustaining slight injury.

VI. Your respondent denies each and every allegation contained in the Ninth Article of the libel, and avers that the collision with the bridge occurred without any fault or negligence on the part of the steamer Troy or those in charge of her navigation, and occurred solely from the fault and insufficiency and weakness in construction of the bridge, and the gross negligence of those in charge of its operation.

VII. Respondent admits that there was damage, but denies that libelant's damage was to the amount alleged in the Tenth Article of the libel.

14 VIII. Respondent admits the allegations of Articles Eleventh and Twelfth of the libel.

IX. That all and singular the premises are true.

Wherefore your respondent prays that the libel herein be dismissed with costs.

THE WESTERN TRANSIT COMPANY, *Claimant and Respondent.*
By GOULDER, HOLDING & MASTEN.

GOULDER, HOLDING & MASTEN,
HOYT, DUSTIN & KELLEY, *Cleveland, O.,*
H. R. SPENCER, *Duluth,*
Proctors for Respondent.

NORTHERN DISTRICT AND STATE OF OHIO,
County of Cuyahoga, ss:

Frank S. Masten, being duly sworn, says that The Western Transit Company, respondent herein, is a corporation, as alleged; that he is one of its Proctors and duly authorized herein; that he has read the foregoing answer and knows the contents thereof, and that the same are true, except as to those matters and things stated to be on information and belief, and as to all such he believes it to be true.

FRANK S. MASTEN.

Subscribed in my presence and sworn to before me by the said Frank S. Masten, this 13 day of November, 1906.

TRACY H. DUNCAN,
Notary Public. [L. S.]

Indorsed: No. 36 A. In the District Court of the United States for the Western District of Wisconsin. In Admiralty. Duluth & Superior Bridge Company, Libelant, *vs.* Steamer "Troy," her boilers, engines, etc., Respondent, The Western Transit Company, Claimant. Exceptions and Answer. Filed Nov. 15, 1906. F. W. Oakley, Clerk. Goulder, Holding & Masten, Proctors for Respondent.

15 Afterwards, to wit, January 12, 1907, order sustaining exceptions filed and entered, as follows, to wit:

In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

This cause coming on to be heard on the exceptions to the libel herein, come the parties, by their proctors, and after hearing the arguments of counsel to conclusion, the Court, being fully advised in the premises, orders that the said exceptions be, and the same are hereby sustained and that the libel here[illegible] and it is hereby dismissed at cost of libelant.

A. L. SANBORN, *Judge.*

Indorsed: No. 36 Admiralty. Dist. Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Order sustaining exceptions. Filed Jan. 12, 1907. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, 822 New York Life Building, Proctor- for Libelant.

Afterwards, to wit, February 4, 1907, came the libelant, by J. A. Murphy and C. E. Kremer, its proctors, and filed Petition for Appeal, as follows, to wit:

In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

And now comes the Duluth & Superior Bridge Company, by Charles E. Kremer and J. A. Murphy, its proctors, the libelant in the above entitled cause, and feeling aggrieved that the Court
16 in the above cause sustained the exceptions to the libel and ordered that the same be dismissed, it prays that this Honorable Court allow an appeal to the United States Supreme Court from the decree and order of this Court in said cause.

J. A. MURPHY,
CHARLES E. KREMER,
Proctors for Libelant.

Indorsed: No. 36 A. Dist. Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Petition for Appeal. Filed Feb. 4, 1907. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, 822 New York Life Building, Proctor- for Libelant.

Afterwards, on same day, to wit, February 4, 1907, order allowing appeal filed and entered, as follows:

In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

The petition of the Duluth & Superior Bridge Company, the libelant in the above entitled cause, praying for the allowance of an appeal from the decree of this court in said cause to the Supreme Court of the United States, the said appeal is hereby allowed as prayed for.

A. L. SANBORN, *Judge.*

Indorsed: No. 36 Admiralty. Dist. Court of U. S. West. District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Order allowing appeal. Filed Feb. 4, 1907. F. W. Oakley, Clerk. J. A. Murphy, C. E. Kremer, 822 New York Life Building, Proctor- for Libelant.

Whereupon, on same day, to wit, February 4, 1907, the court made its certificate of the question of jurisdiction in said cause, as follows, to wit:

17 In the District Court of the United States for the Western District of Wisconsin.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

I, Arthur L. Sanborn, Judge of the District Court of the United States for the Western District of Wisconsin, do hereby certify that the exceptions to the libel filed in the above entitled cause, were sustained and the libel dismissed solely on the ground that this court, sitting as a court of admiralty, had and has no jurisdiction over the cause of action set forth in the allegations of the libel because the said cause of action is founded on a collision between the Steamer Troy and the draw swing of a bridge belonging to the libelant, which, at the time of the collision, was across or partially across the St. Louis River, the said collision resulting in greatly damaging the said bridge draw, and that the said cause of action is not maritime because the part of the said bridge which was struck and damaged was not afloat in the said river, but at the time of the collision was supported, operated and swung across the river upon a foundation permanently built in the navigable channel of the said St. Louis River, a navigable waterway of the United States.

This certificate is made in conformity to the Act of Congress of March 3rd 1891, Chapter 517.

Dated this fourth day of February, A. D. 1907.

A. L. SANBORN,
Judge of the District Court of the United States for the Western District of Wisconsin.

18 [Endorsed:] No. 36 Admi'lty. District Court of U. S. Ninth District of Wis. Duluth & Superior Bridge Co. *vs.* Str. Troy. Certificate. J. A. Murphy, C. E. Kremer, 822 New York Life Building. Proctor for Libelant. Filed Feb. 4, 1907 F. W. Oakley, Clerk.

19 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, Clerk of the District Court of the United States for said District, do hereby certify that I have compared the fore-

going transcript of record with the original records of this court now remaining of record in my office in the case therein lately pending, of Duluth & Superior Bridge Company, Libelant, *versus* The Steamer Troy, her boilers, engines, etc., Respondent, and that the same is a correct transcript therefrom. I further certify that the accompanying certificate of the question of jurisdiction is the original certificate made by the court in said cause.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the City of Madison, in the said Western District of Wisconsin, this seventh day of February, in the year of our Lord One Thousand Nine Hundred and Seven, and of the Independence of the said United States the One Hundred and Thirty-first.

[Seal U. S. District Court, Western Dist. of Wisconsin, Madison.]

F. W. OAKLEY, *Clerk.*

20 [Endorsed:] No. 36 Admiralty A. United States District Court, Western District of Wisconsin. Duluth & Superior Bridge Company, Libelant, *vs.* Steamer "Troy," her boilers, Engines, etc., Respondent. Transcript of Record.

21 In the District Court of the United States for the Western District of Wisconsin.

In Admiralty.

DULUTH & SUPERIOR BRIDGE COMPANY
vs.
STEAMER TROY.

Know all men by these presents that we, the Duluth & Superior Bridge Company, as principal, and J. A. Murphy, as surety, are held and firmly bound unto the Western Transit Company in the sum of Five Hundred Dollars ($500.00), to be paid to it or its representatives or assigns, to which payment we bind ourselves, our successors and assigns jointly and severally by these presents.

Signed this 16 day of February, 1907.

Whereas, the above named Duluth & Superior Bridge Company has appealed to the Supreme Court of the United States from the decree of the District Court of the United States for the Western District of Wisconsin, in Admiralty.

Now, therefore the condition of this obligation is such that if the above named appellant, the Duluth & Superior Bridge Company shall prosecute its appeal with effect, and shall answer and pay all damages and costs which may be decreed against it, including such damages for delay and costs of appeal, in case it shall fail to make good its appeal, then the above obligation shall be void, otherwise to

remain in full force and virtue, and that in such case decree may be entered against it and its surety, as the Court may direct.

THE DULUTH AND SUPERIOR BRIDGE CO.,
By D. M. PHILBIN, *Sup't & Agent;*
J. A. MURPHY, *Surety.*

In presence of
ANNA M. PALMER.
MYRTLE H. STEWART.

STATE OF WISCONSIN, *County of Douglas, ss:*

J. A. Murphy, being first duly sworn, says that he is the surety who signed the within and foregoing bond and that he is worth over and above his debts, exemptions and liabilities in property within the State of Wisconsin not exempt from execution the sum of One Thousand ($1000.) Dollars.

J. A. MURPHY.

Subscribed and sworn to before me this 16th day of February, 1907.

[L. S.] ANNA M. PALMER,
Notary Public, Douglas County, Wisconsin.

My commission expires April 13, 1907.

The foregoing bond is approved.
(S'g'd) A. L. SANBORN, *Judge.*

22 UNITED STATES OF AMERICA,
Western District of Wisconsin, ss:

I, F. W. Oakley, Clerk of the District Court of the United States of America, for the Western District of Wisconsin, do hereby certify that I have compared the writings annexed to this Certificate, with the originals now in my custody, and they are true copies of their respective originals, and are correct transcripts therefrom, and of the whole thereof, now on file and remaining of record in my office.

In Testimony Whereof, I have hereunto set my hand and duly affixed the Seal of the said Court, at the City of Madison, in the said Western District of Wisconsin, this 18th day of February, in the year of our Lord one thousand nine hundred and seven and of the independence of the said United States the one hundred and thirty-first.

[Seal U. S. District Court, Western District of Wisconsin, Madison.]

F. W. OAKLEY, *Clerk.*
By —— ——, *Deputy.*

23 [Endorsed:] 610 20575 United States District Court, Western District of Wisconsin. In Admiralty. Duluth & Superior Bridge Co. vs. Steamer Troy. Bond on Appeal. Filed Feb. 18, 1907. F. W. Oakley, Clerk.
610, 20575 Feb. 20, '07.

24 [Endorsed:] File No. 20,575. Supreme Court U. S. October Term, 1906. Term No. 610. Duluth & Superior Bridge Company., App't, *vs.* Steamer Troy. Certified copy of appeal bond. Filed February 20th, 1907.
Endorsed on cover: File No. 20,575. W. Wisconsin D. C. U. S. Term No. 232. Duluth and Superior Bridge Company, appellant, *vs.* steamer "Troy," her boilers, engines, &c. Filed February 16, 1907. File No. 20,575.

Office Supreme Court, U. S.
FILED
OCT 10 1907
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 232

DULUTH & SUPERIOR BRIDGE COMPANY,
Appellant,
vs.
STEAMER TROY,
Appellee.

Appeal from the United States District Court Western District of Wisconsin.

MOTION TO ADVANCE CASE.

CHARLES E. KREMER,
J. A. MURPHY,
Proctors for Appellant.

Geo. Rossman Co., Printer, Chicago.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1907.

No. 232

DULUTH & SUPERIOR BRIDGE COMPANY,
Appellant,
vs.
STEAMER TROY,
Appellee.

Appeal from the United States District Court Western District of Wisconsin.

MOTION TO ADVANCE CASE.

This is a motion to advance the hearing of the above entitled cause so that it may immediately follow the hearing in case No. 84 entitled the *Cleveland T. & V. R. R. Co. et al.* v. *Cleveland Steamship Company,* now pending in this court.

The reason for making this motion is that both cases are appeals from a district court sitting in admiralty and involve, in many respects, the same questions of admiralty jurisdiction.

Number 84, *Cleveland T. & V. R. R. Co.* v. *Cleveland Steamship Co.,* is the case of a libel filed against the Steamer Wm. E. Reis to recover damages to the center pier of libelant's bridge across the Cuyahoga river in the City of Cleveland, and also damages to the shore abutment of the same bridge, located on or close to the bank of the river, and also to the

dock or wharf in the immediate vicinity of the same.

A libel to recover these damages was filed in the United States District Court at Cleveland and exceptions to the jurisdiction were filed contending that the damage was wholly on land and therefore not within the jurisdiction of a court of admiralty. The court held that the exceptions were sustained and dismissed the libel.

An appeal was thereupon taken to this court.

Case No. 232, now sought to be advanced, is the case of a libel filed by the Duluth & Superior Bridge Company, the owner of a bridge across the St. Louis river, which forms the boundary between the states of Minnesota and Wisconsin, the bridge connecting the City of Duluth, Minnesota, and the City of Superior, Wisconsin.

The Steamer Troy, a large lake steamer, while navigating the St. Louis river, struck the swinging draw of this bridge while it was being opened, so that it buckled, bent and broke, and both ends of the bridge fell into the channel, obstructing it for the passage of all larger vessels. The damages claimed amount to the sum of $155,600.

In this case a libel was filed in admiralty against the Steamer Troy in the District Court at Madison, Wisconsin. Exceptions were filed to this libel, alleging that the bridge was located on a permanent structure and the damage therefore occurred on land, and a court of admiralty, for that reason, had no jurisdiction of the cause of action. The exceptions were sustained and the libel ordered dismissed, whereupon an appeal was taken to this court.

The reason for advancing this case is, that both cases may be heard in succession so that the court

may have before it the questions of admiralty jurisdiction arising out of a collision with a wharf or dock, a center protection and shore abutment of a bridge, and the bridge itself, presenting in this way nearly all structures that vessels are liable to encounter while navigating rivers and harbors.

CHARLES E. KREMER,
J. A. MURPHY,
Proctors for Appellant.

Office Supreme Court, U. S.
FILED
DEC 20 19
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 232.

DULUTH AND SUPERIOR BRIDGE COMPANY,
LIBELANT-APPELLANT,

vs.

STEAMER "TROY"; WESTERN TRANSIT COMPANY, CLAIMANT AND RESPONDENT, APPELLEE.

BRIEF FOR APPELLEE.

Statement of Case.

The sole question involved is one of jurisdiction of a district court sitting in admiralty. Libelant owned and operated a bridge between the cities of Duluth, Minnesota, and Superior, Wisconsin, crossing the St. Louis river, a navigable stream. The bridge is equipped with a swinging span, supported on a turn-table resting upon a solid, permanent base or structure, with sub-foundation of piles driven into the bottom of the river, with space for the passage of vessels on *either* side of the supporting structure—a center-swing bridge. When closed, its ends rest upon permanent abutments, or piers, forming a passageway over the navigable stream for street cars and foot passengers, and when open allowing the passage of the largest lake steamers, carrying

the immense commerce to and from Superior; in fact, it is the largest swinging bridge in the world.

On August 11, 1906, the large merchant steamer "Troy," in-bound, struck the center pier protection and glanced into the swinging part, or draw, of the bridge, and a very heavy damage was done to the bridge and to the owner, who was obliged to at once remove another span to permit the passage of vessels. Whether this was by fault of the steamer "Troy" or of those in charge of the bridge is not material to the present consideration.

Libel was filed against the "Troy" in the Western District of Wisconsin, in admiralty, claiming damages to the amount of $155,600. The Western Transit Company (appellee) excepted to the libel (7) on the grounds:

> 1. That the bridge injured was a structure on land, exclusively for the purposes of land travel, and in no sense or degree an aid to navigation, but, on the contrary, an obstruction in a navigable water channel and highway, a part of the public waters of the United States;
>
> 2. That the damage sustained by the bridge occurred on land, and no part of the same occurred or was suffered on water or any place within the jurisdiction of an admiralty court of the United States.
>
> 3. That the claim for damages does not show a case of admiralty jurisdiction.

On January 12, 1907, the exceptions having been heard, they were sustained and the libel dismissed (10); appeal was taken on the question of jurisdiction; there are no assignments of error. The court's certificate appears at page 12.

ARGUMENT.

In case No. 84, October term, 1907, practically all the questions involved in this case were argued. The claims there were for dock, abutment, and protection piling damage by collision and by *wash*. Here is added a damage to the swinging portion of the bridge. In No. 84, the steamer proceeded against was out of commission; in winter quarters; here the steamer was navigating.

There is no doubt the owner of the "Troy" (if damaged) could maintain an action *in personam* against the owner of the bridge; but it could not do so *in rem*, since a maritime lien cannot attach to a fixed structure.

> "A maritime lien can only exist upon movable things engaged in navigation, or upon things which are the subjects of commerce on the high seas or navigable waters."
>
> *The Rock Island Bridge*, 6 Wall., 213-216.

The vessel-owner must in such case be content with the proceeding *in personam*, without the high privilege and priority of a maritime lien.

The owner of the bridge has the privilege of proceeding against the owner of the vessel in the State courts or in the Federal law courts, but not in admiralty. The remedy, therefore, is same to both owners.

Again, since under the present ruling the damage to the bridge is held *not* a marine tort, the owner of the bridge can in most States proceed against the craft, *by name*, under the water-craft laws. If such torts are maritime, the jurisdiction *in rem* is exclusive in the admiralty.

The Glide, 167 U. S., 606.

It is by no means sure that where an owner of a vessel proceeds in the admiralty for damage done by a bridge, or dock, or pier, and both are found at fault, the owner of the

shore property cannot have any damage he may have sustained taken into account in reduction or entire satisfaction of the vessel's claim.

Courts of admiralty having before them a cause properly within their limited jurisdiction have a broad incidental power to administer upon claims and rights involved and not of themselves proper subjects of the jurisdiction. This principle has been applied most frequently where there is a fund or property in court; but if necessary to prevent inequity *arising from any other cause than our dual judicial system*, there is authority to correct.

Andrews vs. Wall et al., 3 How., 568-573.
The Lottawanna, 21 Wall., 558-583.
Schuchardt vs. Ship Angelique, 19 How., 239-241.
The J. E. Rumbell, 148 U. S., 1.

Courts of admiralty are not courts of equity, but, having a cause rightfully before them, they proceed on equitable principles.

O'Brien vs. Miller, 168 U. S., 287.

It is true that in admiralty mutual fault would not deprive a party of his entire claim, but only divide the damage; and a party might fail in one jurisdiction when he could recover half damages in the other. That, however, is the result of the two systems of law, and not of the law, and furnishes no basis for *judicial* change. To bring such claims as are here presented within the jurisdiction would work an actual wrong to the owner of vessel property, not growing out of the dual system, but by failing to give full weight to the word "maritime" in the constitutional grant.

The marine lien which the bridge-owner would have against a wrong-doing ship would have priority over other creditors, even seamen's wages. Counsel for appellant advances this (Brief, p. 8) as a reason for entertaining jurisdiction. The ship-owner damnified by the bridge cannot

have the privilege of lien, but, as now, would have to be content with an action *in personam*.

That is to say: for a damage done by a ship, the damnified person would have a lien against the ship, but for a damage done by a dock, bridge, pier or draw no maritime lien or other lien could exist. In causes properly within the jurisdiction, the rights are reciprocal. The cargo has a lien upon the ship, and the ship on the cargo; colliding vessels have reciprocal liens, etc. Can this parity of rights be preserved as to realty?

And this is so whether the proceeding *in rem* founded on a maritime lien had its origin as a matter of convenience in service as the brief assumes, or in the nature of a forfeiture for a wrong done by the thing.

Holmes, The Common Law, p. 28.

The Blackheath, 195 U. S.

The decision says in terms that it is not opposed in principle to any previous adjudications of the court and is in fact predicated upon them. It has seemed to us, therefore, that the essence of that decision is that the beacon was—

> "an instrument of navigation *and no part of the shore*, but surrounded on every side by water, a mere point projecting from the sea" (p. 365).
>
> "a Government aid to navigation, from ancient times subject to the admiralty, a beacon emerging from the water, injured by the motion of the vessel, by a continuous act *beginning and consummated upon navigable water*" (367).

A bridge, however, and its supporting abutments and piers serve only to connect the shores; and while the wrong may begin upon navigable water its consummation is upon land.

Aids to Navigation.

To meet this point, it is urged (Brief, p. 13) that a bridge is an aid to navigation, because—

> (*a*) It is a substitute for ferries, *thereby lessening the number of craft employed in navigation.*

It would be as logical to say that a tunnel is an aid to navigation, or that a railroad running along shore is an aid to navigation, since by carrying passengers and freight otherwise to be transported by water fewer boats would be employed and the dangers of navigation to those remaining be lessened.

> (*b*) The center pier resembles the clump of piles on which the beacon was placed.

> (*c*) The draw was swinging *over* the water to allow the "Troy" to pass when it was struck by the "Troy," moving *through* the water.

We submit, these contentions refute themselves in mere statement.

Again, it is urged (Brief, p. 19) that a bridge is an aid, because under control of the Government; that permission must first be obtained for its erection; it must be provided with proper draw, must have proper machinery for opening, and must be lighted at the owner's expense.

The gist of this contention is this: One obtains permission to partially close or obstruct a navigable channel, coupled with the obligation to maintain, operate, and light in a given manner to permit the exercise of the paramount right of navigation as freely as possible; therefore, the obstruction becomes an *aid* to navigation.

The Rule of Stare Decisis (page 26).

The court has to interpret a written constitution, which is not subject to change except in the manner therein provided. The jurisdiction granted to the Federal judiciary is *limited*. For present purposes it extends to "all cases of admiralty and maritime jurisdiction." As to contracts, it has been settled definitely that, no matter what other maritime nations may do by statute, ordinance or decision, with us the contract must be maritime (as defined by this court) or it may not be entertained by a district court sitting in admiralty. So, when it was recently argued that changes in maritime affairs—reasonableness, convenience, desirability of conforming our jurisdiction to that of other maritime nations—required contracts for the construction of a ship to be brought within our jurisdiction, it was rejected without opinion.

Graham & Morton Transp. Co. vs. Craig Shipbuilding Co., 203 U. S., 577.

As to torts, *locality* was early adopted as the test.

Waring vs. Clark, 5 How., 473.

The Plymouth, 3 Wall., 20.

In the last mentioned case the true meaning of "locality" was given (p. 34):

> "The wrong and injury complained of must have been committed wholly upon the high seas or navigable waters, or, at least, the substance and consummation of the same must have taken place upon these waters to be within the admiralty jurisdiction."

There must be some line of limitation, as the grant is limited. Some uncertainty must exist, as the grant is in general terms. Some inequalities may exist, *must exist*, since wherever the limitation may be placed, there remains

the cases lying immediately adjacent. It cannot be defined exactly; but this is not the fault of, nor does it evidence any error in, the present defining line. The difficulty arises from

> "the complex character of our Government, where separate and distinct specified powers of sovereignty are exercised by the United States and a State independently of each other and within the same territorial limits."
>
> *The St. Lawrence*, 1 Black., 522-526.

Uncertainty and difficulty cannot be avoided; a defining rule cannot be laid down which will meet in advance every possible case. The present test has served long and well. It is consistent with the language employed by the people in their Constitution. It meets their purpose in granting this jurisdiction to the Federal courts, which could only be that in administering international law the tribunals having that authority should be open to all people on the same terms, and not left to the necessarily more or less vacillating policy of individual States. But municipal affairs, non-maritime affairs, should be left to the municipal law, and jealous even of the grant made, the people saved to suitors the right to resort to the common law for relief when it was competent to give it.

If claims for damage to bridges, piers, spring piling, docks, and such like are of admiralty and maritime jurisdiction, where may the determining line be drawn? Eliminate the maritime element, and the field is almost limitless.

> "The fundamental principle underlying all cases of tort, as well as contract, is that, to bring a case within the jurisdiction of a court of admiralty, maritime relations of some sort must exist, for the all-sufficient reason that the admiralty does not concern itself with non-maritime affairs."
>
> *P., W. & B. R. R. Co. vs. S. S. Co.*, 23 How., 209-697.

When a decision is made or principle announced on mature deliberation and has been followed, it should be regarded, and the people have the right to regard it as a just declaration or exposition of the law, and to conduct their affairs on that basis. The certainty of having a definite principle applied enables the profession to advise business men as to the result of their acts with some degree of certainty. If principles announced and decisions made are lightly regarded, the harm reaches beyond the particular case. Unless it touches the person of a citizen or deprives or interferes with his liberty or personal right, a reasonable rule steadily adhered to although not the best is better than changing endeavors to find the perfect. When announced, decisions and principles should not be altered except on most cogent reasoning or when clearly wrong.

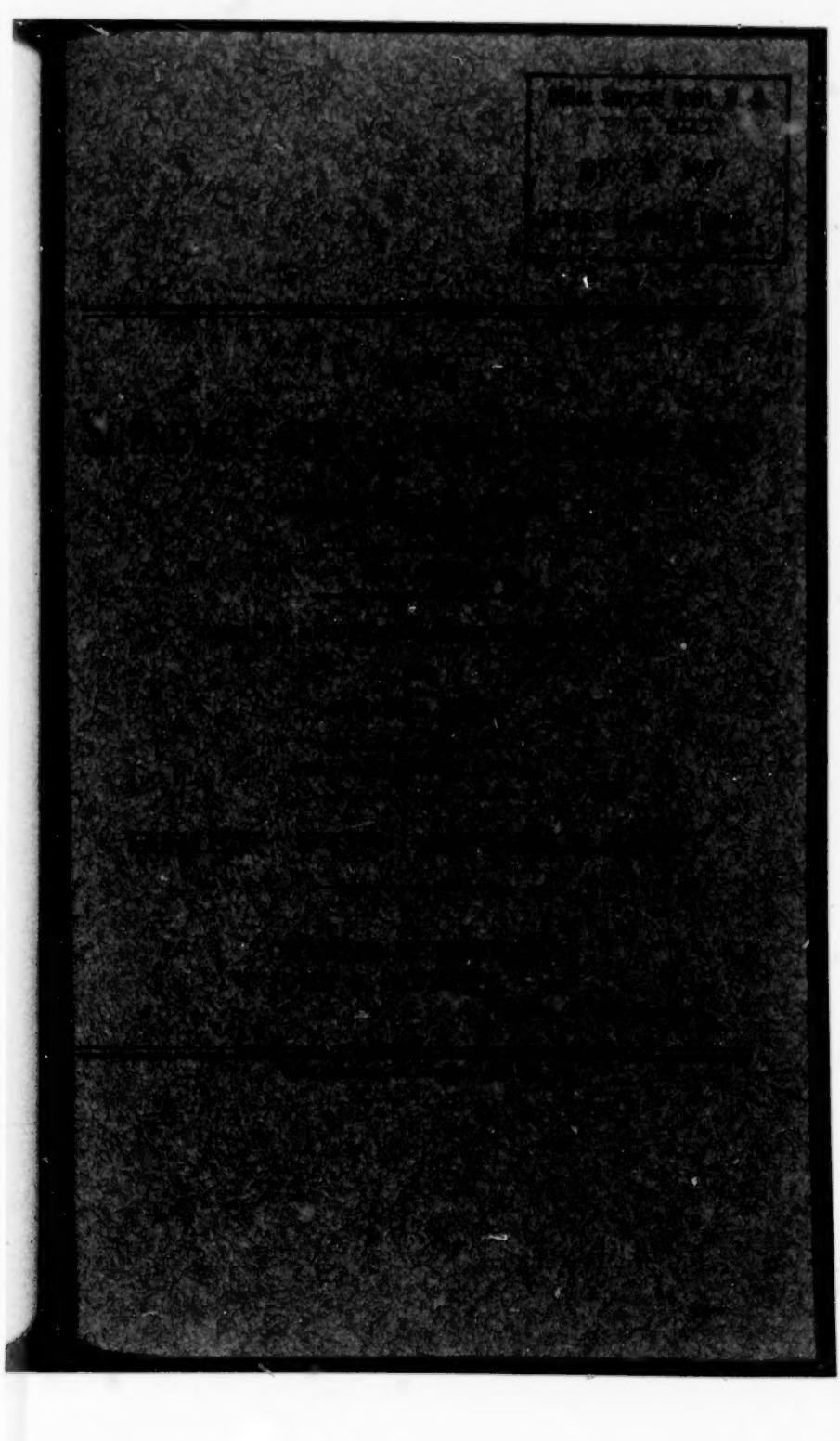
Kent's Com., Vol. 1, * 476.

The test now applied to determine whether a tort is maritime or not was deliberately announced and has been steadily adhered to, is reasonable, as certain as may be made under the limiting language in the Constitution, and we submit should not be changed. It is not clearly erroneous, if in error at all, and there is no overpowering reason calling for a change even if it might be made within the Constitutional grant.

We respectfully submit that the decree below should be affirmed.

HARVEY D. GOULDER,
FRANK S. MASTEN,
Advocates.

H. A. KELLEY,
H. R. SPENCER,
S. H. HOLDING,
Counsel.



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1907.

No. 232.

DULUTH & SUPERIOR BRIDGE COMPANY

vs.

STEAMER TROY.

IN ADMIRALTY.

BRIEF FOR APPELLANT.

This is an appeal from the District Court of the United States for the Western District of Wisconsin.

The question is one of admiralty jurisdiction arising out of a collision of the Steamer Troy with the Duluth & Superior Bridge over the St. Louis River, and was decided by the District Court upon exceptions to a libel *in rem* against the steamer to recover damages sustained by the bridge.

The libel alleges that the libelant is the owner and was in possession and control of a certain bridge, which connects the cities of Duluth, Minn., and Superior, Wis., and is erected across the St. Louis river, which is at this point the boundary between the States of Wisconsin and Minnesota.

The libel alleges that there are two permanent spans of this bridge, each 200 feet long, and one draw or movable span 460 feet long. It is alleged that the draw or movable span is placed upon a turn-table, and this rests upon a base built of stone and placed upon many submerged wooden piles driven into the bottom of the river.

Upon the turn-table of the draw span there was all necessary machinery, so that the draw span can be readily swung around, making an opening up and down the river leaving a channel 200 feet in width on each side of the bridge, when open, for the passage of vessels. When the bridge is open it is guarded or protected by rows of piles up and down the river for a width of 60 feet and a length of 500 feet. On the channel side of this protection pieces of timber are fastened as fenders to protect the piers of the protection, and to prevent injuring vessels passing through the bridge. The bridge is known as a center swing bridge and when closed its ends rest on permanent abutments and piers, so that street cars, teams and all kinds of vehicles and passengers can cross the same between Duluth and Superior.

On the morning of August 11th, 1906, at a few minutes before 1 o'clock, the Steamer Troy signaled to the engineer of the bridge to open the same. The bridge was cleared of passengers and vehicles and it began to swing, the Superior or east end moving up stream. It is alleged the Steamer Troy, running unusually and unnecessarily fast, came on and collided with the center protection of the bridge and glancing along struck the bridge, which was then well clear of the shore abutment and still swinging rapidly away from the steamer. The blow was so

heavy that it lifted the bridge and gave it a twist, causing it to buckle and break so that both ends fell into the stream, almost entirely obstrucing the channel and causing damage to the bridge amounting to $155,600.

The Western Transit Company, owner of the Steamer Troy, filed exceptions and an answer to this libel, and in the former it alleged:

1st: That the bridge injured was a structure on land, exclusively for the purposes of land travel, and in no sense or degree an aid to navigation, but, on the contrary, an obstruction in a navigable water channel and highway, a part of the public waters of the United States.

2nd: That the damage sustained by the bridge occurred on land, and no part of the same occurred or was suffered on water or any place within the jurisdiction of the admiralty court; and

3rd: That the claim for damage does not show a case of admiralty jurisdiction.

A hearing was had upon the libel and exceptions and the court sustained the exceptions and dismissed the libel.

Thereupon the libelant appealed.

ARGUMENT.

We are aware that there is pending in this court the case of *Cleveland Terminal & Valley R. R. Co. et al.* v. *Cleveland S. S. Co.*, being No. 84, October Term, 1907, and that this case involves substantially the same questions of jurisdiction that are involved in the case at bar.

In the former case the Steamer Reis collided with the center protection of a bridge located in the navigable channel of the Cuyahoga river in the City of Cleveland, Ohio, and injured it and at the same time the abutment or shore end of the bridge, and the wharf or dock in the immediate vicinity.

This case differs from the one at bar in that the bridge itself was not injured by the Steamer Reis, while in the case at bar the center protection and the bridge were both injured.

We have carefully read the able brief of proctors for appellants in the *Reis* case and it covers so many of the points of argument that apply to the case at bar, that we can add but little to what is there said that could be of use or benefit to the court in determining the question involved in this case.

The decisions and authorities that we would cite in support of appellant's case here, would be the same that are cited in the *Reis* case, and we therefore ask permission to refer to that brief rather than reprint the citations and references that are there found.

It will not be disputed that this collision between the Troy and the bridge presents a case or controversy within the jurisdiction of an admiralty court.

The Western Transit Company, the owner of the Troy, is at liberty to file a libel in admiralty to recover any damages that it may have sustained by collision with this bridge, and the court would be competent to try the question of fault and liability and enter a decree against the owner of the bridge, if solely at fault, for the whole of the damage, or if the steamer was also held to be at fault, for one-half of the latter's damages. As to this there can be no question, for this court, in the case of *The Blackheath*, 195 U. S., 361, on page 362, says:

> "It is clear that if the Beacon had been at fault and had hurt the ship, a libel could have been maintained against a private owner, although not *in rem*."
>
> *Phil. W. & B. R. Co.* v. *Phil. & H. De G. Steam T. Co.*, 23 How., 209.
>
> *Atlee* v. *Northwestern Union Packet Co.*, 21 Wall., 389.
>
> *Panama R. Co.* v. *Napier Shipping Co.*, 166 U. S., 280.

We are not here therefore to urge this court to extend the admiralty jurisdiction so that it embrace a controversy entirely new to the tribunals and the jurisdiction, or such a one as involves questions that had never before been tried in the admiralty courts in this country. There are numerous decisions of the District and Circuit Courts in the books in which controversies arising out of collisions between steamers and bridges have been tried in the admiralty courts. We refer to a few of them only:

Ethridge v. *Philadelphia*, 26 F. R., 43.

Assaute v. *Charleston Bridge Co.*, 40 Fed. Rep., 765.

Hill v. *Board, etc.*, 45 Fed. Rep., 260.

Greenwood v. *Town of Westport*, 53 Fed. Rep., 824.

City of Boston v. *Crowley*, 38 Fed. Rep., 202.

Damage by wharf:

Ball v. *Frenholm*, 45 Fed. Rep., 588.

City of Lincoln, 25 Fed. Rep., 835.

Damage by obstruction to navigation:

Oregon C. Trans. Co. v. *Columbia St. B. Co.*, 53 Fed. Rep., 549.

A notable example of a collision between a floating vessel and an object on the land is the case of *The Maud Webster*, 8 Ben., 547, Fed. Cas., 9302. In this case a schooner navigating Long Island Sound came into collision with a derrick which was being used in the erection of a lighthouse on a shoal or reef in the waters of the Sound. A libel was filed by the owner of the schooner for damages sustained by her, and a cross libel was filed by the owner of the derrick to recover the damages to the derrick. The court took cognizance of the case, tried the question of fault and decided it against the schooner, dismissing the libel, but refused to enter a decree on the cross libel of the owner of the derrick upon authority of the case of *The Plymouth*, 3 Wall., 20.

Under this decision the owner of the derrick, although he had litigated in a court of competent jurisdiction the question of liability for damages sustained by both schooner and derrick, and the court had decided the controversy, found the fault and entered a decree against the schooner, was compelled to resort to a second tribunal to recover his dam-

ages. This is certainly an extraordinary condition of affairs. If, in every case of this kind, without impairing the present plan of the judiciary, the test of jurisdiction should be a state of facts which would give the admiralty court jurisdiction if the damages were sustained by the floating object, then it should also include the damages sustained by the fixed object. The whole controversy could then be settled at one trial, and by one decree and the jurisdiction would become a perfect and harmonious whole. A court of admiralty should be competent to hear all claims for damages which are inflicted by the ship itself. If, in such a case, the ship sustained damages it would be competent for her, if proceeded against, to file a cross libel and recover her damages in the same suit. It is the only logical, consistent and reasonable view to take of the jurisdiction. It certainly is a faulty system of jurisprudence which compels suitors, in a case of mutual damage, to resort to two different tribunals to settle one controversy. This, it seems to us, is fundamentally wrong, even though based on precedent. There can be no hardship to either party in carrying out the rule so as to embrace damages done by ships to structures on land with which, while navigating, she can collide or come in contact, nor is there any sound or valid reason why the Admiralty Court should not, in every case of damage done by a ship, take jurisdiction and decide who is liable, and enter such a decree as the facts warrant, be the same against the ship or the owner of the structure with which she collided.

From the standpoint of convenience and expediency it is desirable that a Court of Admiralty

should assume jurisdiction in cases of this kind. In all of the important ports of the Great Lakes and in many on the sea coast, steamers and vessels from distant points pass up and down narrow channels, confined by wharfs and docks on either side, and in many cases these are crossed by numerous bridges. Across the rivers emptying into Lake Michigan there are upwards of seventy bridges across navigable waterways and more than fifty miles of wharves and docks. It is almost a daily occurrence that vessels, by reason of negligence or accident, damage these wharfs and bridges and often receive damages themselves. The admiralty courts are the only ones which provide a lien and a proceeding *in rem* against the offending vessel. In many cases the vessel is owned in a distant state or country. The names of her owners are unknown. Personal service cannot be had on them. Attachment of property of the defendant, in a case of tort, like a collision, is not provided for by the laws of many states bordering upon navigable waters. Even if attachment issue, it can only attach the interest of the owner, and is always subject to all liens and incumbrances upon the steamer. The owner's interest only can be reached. In a proceeding *in rem* the vessel herself is liable regardless of the fact of her ownership, or how she may be incumbered by mortgages or other liens. Damages arising out of a tort are paid out of the proceeds of the vessel in preference to all liens arising *ex contractu*, including claims for seamen's wages.

The R. S. Carter, 40 Fed. Rep., 331.

The F. H. Stanwood, 49 Fed., 577, and cases there cited.

There is no valid reason why the owner of a bridge or wharf injured by a steamer, should be deprived of a remedy in admiralty, when that remedy is given to the owner of a vessel or some other floating object damaged by the same steamer. One is as much entitled to the advantages of a proceeding in admiralty as the other, and as was said by Mr. Justice Brown in the case of the *Blackheath*,

> "the distinction between damage done to fixed and floating structures is a somewhat artificial one, and in my view, founded upon no sound principle, and the fact that congress, under the constitution, cannot extend our admiralty jurisdiction, affords an argument for a broad interpretation commensurate with the needs of modern commerce."

The Blackheath Case.

Examination of the case of the *Blackheath* in the lower court, 122 Fed. Rep., 112, shows, that the decision was largely based on the case of *The City of Milwaukee* v. *Curtiss*, 37 Fed. Rep., 705.

The *Blackheath* case arose in Alabama. The opinion in the lower court was written by Judge Toulmin. He first established that the "locality" of an injury determined whether the admiralty had jurisdiction.

Citing *Herman* v. *Port Blakely Mill Co.* (D. C.), 69 Fed., 646. *The Mary Garrett* (D. C.), 63 Fed., 1009, and authorities therein cited.

The Professor Morse (D. C.), 23 Fed., 803: Then, to show that the "locality" of the swing part of a bridge over a navigable stream was on the land, and, as decisive of the case, he cited only the *Cur-*

tis case, and relied on it and made it authority for his holding.

This being so, it must follow that the decision of the Supreme Court in the *Blackheath* case is a direct overruling of the *Curtis* and also of the *Neil Cochran* cases, on which it relied, and the *John C. Sweeney* case which followed it. And a reference to the Arkansas, with approval in *The Blackheath*, 195 U. S., is a direct adoption of the reasoning of Judge Love as the reason of the Supreme Court, and the same reference to F. & P. M. No. 2 in the *Blackheath* decision, 195 U. S., is also an approval of the interpretation put upon the *Arkansas* case by the court in that case, and an authoritative denial of the position taken regarding the *Arkansas* case in *The Professor Morse*, 23 Fed., and the approval of the same by Judge Jenkins in the *Curtis* case.

Justice Holmes' approval and reference to the *Arkansas* and *F. & P. N. No. 2* is most significant, and his omission of all reference to the *Neil Cochran*, the *Curtis* and *John C. Sweeney* is proof positive that he intended to overrule those cases and the doctrine of "locality" on which they were based, and also the *Plymouth*, and to establish the more reasonable rules of maritime nature of tort, in consonance with the *Genesee* case and also *Dunham* v. *Ins. Co.*

The Blackheath in 122 Fed., 112, also cited Spencer on Marine Collisions, Sec. 11.

A reference to the text of Spencer shows that all the above cases are cited in support of the rule there laid down. It follows, therefore, that this section, and cited cases, having been before the court when considering the *Blackheath* appeal (there be-

ing no other question in the case except the one of jurisdiction), that if the court did not intend to overrule all the above mentioned cases, it would have named the exception in the opinion.

There can be no distinguishing of the *Blackheath* from the *Curtis*, the *John C. Sweeney*, or the case at bar, as to the facts, on the ground that a beacon light is a help to commerce, is one of its instrumentalities and bridges are not. That has never been made a test. The test of "locality' rests on the proposition that the structure being on land no lien in admiralty can attach; that it must be a floating body, personally. The test of "aid of commerce"was not in it.

If the use first aid to commerce had been a test, then the *Plymouth* and *Johnson* cases would have been decided the other way, because an elevator is only good because it facilitates commerce by loading vessels. Commerce cannot exist without means to load vessels. But the relationship to commerce never entered into consideration. It was, where was the locality, the locality of the thing injured when the damage was done.

Now, in *The Blackheath*, 122 Fed., 112 (lower case), it appears that the beacon was a structure 20 feet high, firmly fixed upon the bottom of the river by piles driven 12 feet deep. No lien in admiralty could attach to that any more than to an elevator. It was outside of the navigable channel, 15 or 20 feet. But if damage had been done to a vessel by negligence of the beacon an action *in personam* would lie in admiralty against the owner thereof. The same has been held in regard to bridges. It was only to be expected, therefore, in the rule of

consistency and natural justice, that if admiralty takes cognizance of an action *in personam* against a bridge or pier, for injury through negligence, to a vessel, that the same court should take cognizance of an action *in rem* or *in personam* against a vessel for injury to a bridge.

This consideration led Justice Brown to write a concurring opinion and expressly state that the *Blackheath* decision in 195 U. S. overruled the *Plymouth* and all decisions depending thereon for authority.

Quoting from the opinon of Justice Holmes:

> "And if the libel be founded upon one single continued act, which was principally upon the sea, though part was upon the land, a prohibition will not go. Com. Dig. Admiralty, F. 5; 1 Roll. Alr., 533, pl. 18."

In distinguishing the *Plymouth* the opinion says:

> "In the case of the Plymouth there was nothing maritime in the nature of the tort, for which the vessel was attached. The fact that the fire originated on the vessel is contrasted with the fact of collision. The former is not martime, only incidentally. The latter, collission, is entirely maritime in its nature."

Justice Holmes mentions that a beacon was an aid to navigation and from ancient times subject to admiralty. It is also true that "an injury from any ship" was from ancient times cognizable by admiralty. The decision must stand or fall as it rests on the principle, and that principle must be the nature of the tort; it is maritime in its character."

Here we have a swing bridge in the middle of the channel exposed to the negligence of vessels. Dam-

ages are large. Admiralty courts are experienced in determining the respective negligence of ships and bridge operatives. Damage often happens through mutual negligence. This would bar recovery to the injured one in a court of law. Admiralty decrees are according to natural justice. Admiralty, alone, can control vessels and their owners. Their decrees are omnipotent. If bridge companies are denied the protection of admiralty, accidents such as this must be more frequent. No reason exists against admiralty assuming jurisdiction; many reasons are prominent why it should.

A Bridge is Not an Obstruction, but an Aid to Navigation.

Stress will be laid upon the point that in this case the bridge was not an aid to navigation, and that, therefore, a collision with it, and damage to it, would not bring the case within the authority of the case of the *Blackheath*. It is alleged that the bridge was not alone not an aid to navigation, but was an obstruction to it.

In meeting this argument we have to say on this subject, that a bridge across a navigable stream or waterway is a substitute for navigating the same by vessels. Without the aid of bridges streams like the St. Louis river could only be crossed by boats known as ferries. These ferries are watercraft entitled to the same rights and privileges in crossing the stream, that are accorded to vessels moving up and down the same. Without the bridge, therefore, the vehicles and passengers desiring to cross the waterway must resort to boats. For the convenience of those desiring to cross the waterway bridges

are built and maintained. Before this bridge, or any bridge, can be built across a navigable stream, it becomes necessary to obtain from the sovereignty, either the state or the government, the right to build the bridge. The paramount right of navigation of all navigable waters is conceded, and it is only the state that has a right to permit it to be impaired temporarily by the construction and maintenance of a bridge across the waterway. Having obtained this right, however, as in this case the libelant has, from the United States Government, the bridge becomes a lawful structure, and therefore it is not, in law, an obstruction to navigation. It is there by right of the sovereign and under the laws of the United States must be constructed in accordance with the plans approved by the Secretary of War. It is, therefore, in every sense a lawful structure, and the libelant has a right to use it and maintain it, and the vessels navigating the river must respect this right, and therefore have no right to treat it as an obstruction or a nuisance.

Being a substitute for ferries and other watercraft, carrying the commerce which would otherwise go to these craft, it becomes an aid to navigation. It is an aid because it takes care of the vastly greater and more constant, diversified and uninterrupted traffic across the waterway, which, if carried on by watercraft, would greatly hamper and embarrass vessels bound up and down the stream, and make navigation for all more hazardous. The construction and maintenance of the bridge is very much less of an interruption or interference with the right of navigation by the vessels bound up and down the stream, than numerous ferry boats would be. These

bridges are promptly opened at the request of vessels desiring to pass up and down the stream through the same, by signals, which, if given in time, will permit the steamer to proceed without material interruption, inconvenience or loss of time. If, in place of the bridge, there were numerous ferry boats, large and small, plying across the stream carrying passengers, vehicles and cargo, it would make the passage up and down the river very much more dangerous, and it would probably be much more impeded than by a bridge which is promptly opened when the opening is requested by up and down-bound steamers.

The bridge is much more easily passed and avoided than would be the numerous ferrying craft which would carry the traffic in case there was no bridge. Being, therefore, a lawful and known structure, it is not an obstruction to navigation, and, taking the place of ferry boats, it is a substitute for them, and, being less an interference than they would be, can be justly considered an aid to navigation.

The draw span with which the Troy collided is movable; it revolves on the center table, it opens and closes; it swings across the navigable channel. It is not a fixed object; it is not a continuation of road or street; it can be swung so as to collide with a moving vessel, either by swinging against or overtaking her. The center pier is in navigable water. Before it was put there vessels could pass over the ground that it now covers. In this respect it resembles the clump of piles on which the beacon light was located when the Blackheath struck it. It was not so much because a beacon light was an aid to navigation that moved the court to declare the striking

of it a maritime tort, as the fact that it was located in navigable waters, *where a vessel could reach and strike it while engaged in navigating the waterway in which it was placed.* There is no virtue in the fact that damage was done to a thing that is used in aid, or for the purposes of navigation. If in the *Plymouth* case the flames from the steamer Falcon had set on fire a vessel hauled out on the dock for repairs, or the life-saving station, or a light house on the pier, this of itself would not have made the tort any more maritime than the damages to the warehouse. A warehouse might be considered an aid to navigation, if in it were stored goods to be shipped, or which had been carried on a vessel.

The distinction is not based upon the character of the thing injured, *but upon the character of the locality where the injury occurred.* At the time of the collision both bodies, viz: the Troy and the bridge, were moving over and in navigable water. The bridge, while opening, was struck, while the Troy was moving towards it. If the bridge had been open she would have passed on up the river without injuring it or herself. The bridge was not a fixed object when she struck it. The draw span is not fixed or fastened, it is capable of independent movement, and is no part of the pier or the structure on which it moves. It can be taken away without disturbing these.

The *Blackheath* case decided, and by the decision changed what was supposed to be the law in this, that prior to this decision claims for damages over which admiralty courts assumed jurisdiction, must in every case have occurred to floating objects. If afloat the jurisdiction was complete. If fixed to the

land, no matter how, it was not. This was the distinction, and no case can be found in which admiralty assumed jurisdiction when the object was not afloat except the case of the *Arkansas,* 17 Fed. Rep., 383. The *Plymouth* has, partially, at least, in effect been reversed by the decision of the *Blackheath* case. Since that decision a collision with a fixed object, when the latter is injured, can be brought in the Admiralty Court and a recovery for the damages can be had.

The spiles which supported the beacon light in Mobile Bay were of the same character and driven into the ground the same way, as were the spiles supporting the bridge, and in both cases were used as base, supports and foundations for superstructures. In the one case a beacon light, in the other a bridge. In both cases a vessel navigating a navigable waterway struck and damaged them. Why and how? Because, in both cases they were in navigable water. What difference in principle can the character of the structure make? Suppose the beacon light had been a floating one, anchored to the spot, like the Pintsch gas buoys in common use now are. Would there have been any doubt of the jurisdiction? Suppose this bridge had been a floating plank, timber or a pontoon bridge, would this have brought it within the jurisdiction? Is not after all the locality where the damage is done the true test? It has always been considered so, and it is so in all cases, and the *Plymouth* case, therefore, is not good authority for denying the jurisdiction in this case. In the case of the *Plymouth* the injury did not occur on, over or in navigable water. In the *Blackheath* case it did, and in this case it did.

And because one was a beacon light and the other a bridge can make no difference in principle. The vessel struck while she and the bridge were both moving on and in navigable water. This is the only true test. No other is rational or logical.

THE BRIDGE IS CONSTRUCTED, OPERATED, LIGHTED AND MAINTAINED UNDER LAWS AND REGULATIONS OF THE GOVERNMENT OF THE UNITED STATES.

The Act of Congress of August 18th, 1894, Chap. 299, Par. 5, 28, Stat. 362, Sec. 5, provides:

> "That it shall be the duty of all persons owning, operating and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges *under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other watercrafts, and such rules and regulations, when so made and published, shall have the force of law.* Every such person who shall wilfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be guilty of misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars, or by imprisonment (in case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in discretion of the court."

Under the Act of March 3rd, 1899, Chap. 425, Par. 9-30, Stat. 1151, superseding the Act of Con-

gress of 1890, Chap. 907, Par. 1026, Stat. 455, Sec. 9, it is provided as follows:

> "That it shall not be lawful to construct or commence the construction of any bridge, dam, dike or causeway over or in any port, roadstead, haven, harbor, canal, navigable river, or other navigable water of the United States until the consent of Congress to the building of such structures shall have been obtained and until the plans for the same shall have been submitted to and approved by the Chief of Engineers and by the Secretary of War: Provided, That such structures may be built under authority of the legislature of a state across rivers and other waterways the navigable portions of which lie wholly within the limits of a single state, provided the location and plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced; and provided further, That when plans for any bridge or other structure have been approved by the Chief of Engineers and by the Secretary of War, it shall not be lawful to deviate from such plans either before or after completion of the structure unless the modification of said plans has previously been submitted to and received the approval of the Chief of Engineers and of the Secretary of War."

Section 10 prohibits the obstruction of navigable waters, and to "in any manner alter or modify the course, location, condition or capacity of any port, roadstead, haven, harbor, canal, lake, harbor of refuge or enclosure within the limits of a breakwater or of the channel of any navigable water of the United States" unless the work has been recommended by the Secretary of War.

Section 11 provides for the establishment by the Secretary of War of harbor lines.

Section 13 makes it unlawful to deposit refuse, etc., in navigable waters.

Section 18 prohibits the obstruction of navigation by bridges, and provides for the altering and changing of the same to admit of free and unimpaired passage through them, and for the punishment for a failure to comply with this law, and in the event of litigation that an appeal or writ of error may be taken from the District Court or Circuit Court *direct to this court by the defendants.*

Section 19 provides for the removal of obstructions to navigation.

In addition to this, under the Act of March 23rd, 1906, Chap. 11, 30, 34, Stat. 84, Sec. 2, provides:

> "That any bridge built in accordance with the provision of this Act shall be a lawful structure and *shall be recognized and known as a post route,* upon which no higher charge shall be made for the transmission over the same of the mails, the troops and the munitions of war of the United States than the rate per mile paid for the transportation over any railroad, street railway or public highway leading to said bridge; and the United States shall have the right to construct, maintain and repair, without any charge therefor, telegraph and telephone lines across and upon said bridge and its approaches; and equal privileges in the use of said bridge and its approaches shall be granted to all telegraph and telephone companies."

Sec. 3:

> "That all railroad companies desiring the use of any railroad bridge built in accordance with the provisions of this Act shall be entitled to equal rights and privileges relative to the pass-

age of railway trains or cars over the same and over the approaches thereto upon payment of a reasonable compensation for such use; and in case of any disagreement between the parties in regard to the terms of such use or the sums to be paid all matters at issue shall be determined by the Secretary of War upon hearing the allegations and proofs submitted to him."

Section 4 prohibits the obstruction of navigation by bridges, and provides for the operation of the bridge, as follows:

"The persons owning or operating any such bridge shall maintain, at their own expense, such lights and other signals thereon as the Secretary of Commerce and Labor shall prescribe. If the bridge shall be constructed with a draw, then the draw shall be opened promptly by the persons owning or operating such bridge upon reasonable signal for the passage of boats and other watercraft. If tolls shall be charged for the transit of any bridge constructed under the provisions of this Act, of engines, cars, street cars, wagons, carriages, vehicles, animals, foot passengers, or other passengers, such tolls shall be reasonable and just, and the Secretary of War may, at any time, and from time to time, prescribe the reasonable rates of toll for such transit over such bridge, and the rates so prescribed shall be the legal rates demanded and received for such transit."

These statutes establish the placing of bridges as an aid to commerce in crossing a navigable river. In addition to the authority obtained from Congress or the state for the erection of the bridge, there is a regulation of all bridges over navigable waterways in the United States, even when lying entirely within a state.

First: In providing how and where they shall be

constructed so that they do not interfere with navigation of the waterway by vessels.

Secondly: Provision is made for requiring the prompt opening of them for the passage of vessels and other watercrafts.

Thirdly: The Acts of Congress provide that the Secretary of War may make and publish rules and regulations for the operation of the bridge, which shall have the force of law.

Fourthly: Under the Acts there shall be maintained on the bridge, at the expense of its owners, such lights and other signals as the Secretary of Commerce and labor shall prescribe.

There is further provision by Congress which prohibits the obstruction of the waterway by the bridge getting out of repair and condition, and the Secretary of War is authorized to compel alteration and changing of the bridge so as to provide a freer and more unimpaired passage for vessels.

In this respect bridges are subject to the laws of Congress in much the same way as are vessels. The law requires that vessels shall be inspected in hull, boiler, machinery and life saving apparatus; that they shall be equipped in a certain manner, and shall, when being navigated, carry certain lights displayed in a certain manner. They shall also observe certain rules in passing, and make certain signals in order to safely pass each other.

In a publication issued by the Lighthouse Establishment of the Department of Commerce and Labor in 1907, we find the following:

"REGULATIONS FOR LIGHTING BRIDGES OVER NAVIGABLE RIVERS.

Department of Commerce & Labor,
Light-House Board,
Washington, D. C., March 1, 1907.

The regulations published herewith were adopted by the United States Light-House Board at its session of April 2, 1883, and amended at its sessions of June 4, 1904, June 4, 1906, and July 12, 1906, in accordance with the following Act of Congress:

Act of Congress Relating to Lighting Bridges Over Navigable Rivers.

'Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, * * * That all parties owning, occupying or operating bridges over any navigable river shall maintain at their own expense, from sunset to sunrise, throughout the year, such lights on their bridges as may be required by the Light-House Board for the security of navigation; and, in addition thereto, all persons owning, occupying or operating any bridge over any navigable river shall, in any event, maintain all lights on their bridge that may be necessary for the security of navigation.

Approved August 7, 1882.

By order of the Light-House Board:

GEORGE C. REITER,
Rear-Admiral, U. S. Navy, Chairman.'"

Following this there is a description of the different types of the bridges, and the provisions for the kind of lights that are to be maintained on these bridges, and on page 18 of this circular we find the following in relation to the operation of draw bridges:

"STOPS FOR DRAW BRIDGES.

"It having come to the knowledge of the Board that in some cases, owing to the wind or

> the momentum of their weight, draw bridges have swung through more than their proper angle, thus obstructing the opening and endangering the safety of navigation, the attention of the owners or operators of draw bridges is hereby called to the importance of providing stops to prevent draws from rotating beyond the proper point."

On page 19 is a description of the kind of lights that were adopted by the Light-House Board at its session of June 4th, 1906.

The last previous circular to the one above was issued on June 21st, 1904, but there was issued by the Light-House Board July 12th, 1906, a circular which is found on page 18 of Light-House Board Regulations, issued in 1907, which provides that the use of oil lamps shall be discontinued on bridges over navigable streams where electric lights are used.

These regulations, by virtue of the statutes, have the force of law and must therefore be strictly observed by the persons operating and maintaining bridges over navigable waters. The law applies to all bridges over navigable streams, including those authorized by the legislature of states as well as of those in which the construction is authorized by Congress, the latter class being bridges over waterways which are a boundary between states.

The bridge required by law to be opened and moved out of the way of a vessel which gives a proper signal for such opening. It must be so constructed as not to impede or interfere with the navigation of the waterway by vessels. The bridge is, therefore, in its construction, maintenance and

operation, as much subject to the laws of Congress as is the vessel.

It is an aid to commerce, as under the Act of March 23rd, 1906, it shall be known as a post route and the rates or charges to be made for the transmission of mails, troops and munitions of war of the United States is regulated by this statute, and the right is granted to the government to maintain telegraph and telephone lines across the bridge. Under these acts, as an aid to commerce, other railroad companies desiring to use any railroad bridge built under the authority of Congress, may do so, and the compensation for the use of such bridge is to be determined by the Secretary of War. We have then a structure authorized by Congress, constructed according to specifications approved by the Secretary of War, and regulated in its operations for the purpose of land traffic, by a department of the government, and also in its operation in relation to navigation.

Does it not, therefore, closely resemble in principle the aid to navigation with which the Blackheath collided in Mobile bay? The only difference is that the bridge and the lights on it are not maintained at the expense of the government. The bridge, is, however, just as much under the control of it as was the light on the clump of spiles when the Blackheath struck it.

A person injuring a light used by the government, as the one displayed from the spiles in Mobile Bay, can be punished by fine or imprisonment.

The owner of a bridge who refuses to open the same for the passage of vessels is also, under the Acts of Congress, guilty of a misdemeanor, for

which he can be punished by fine or imprisonment. And the same is also true if the owner maintains an improper bridge or one which is objectionable to the War Department on account of its interfering or impairing the right of navigation.

Both are erected and maintained under the supervision of the government, and both the bridge and light are an aid to commerce. And we contend that the bridge is a lawful structure and an aid to navigation, within the rule laid down in the case of the *Blackheath*.

A bridge which readily opens for the passage of vessels is at no time an obstruction, even though it is an obstacle to navigation. It is, however, no more an obstacle to navigation than another vessel at anchor in the same locality would be. It is much more readily avoided by a passing vessel than is another moving vessel, even though bound in the same or in the opposite direction. In the matter of crossing a navigable channel, it is less an obstacle than a crossing vessel would be, so that by furthering and expediting the passage of vessels up and down the stream it is to that extent aiding vessels in navigating it, and therefore is an aid to navigation.

The Rule of Stare Decisis.

Far be it from us to say that the rule of *stare decisis* is not a good rule, or one that should be lightly held and regarded. Still, we feel if it stands for mere precedent in procedure it ought not to be adhered to with too much firmness. In every case when the question is one of procedure and practice, and there is no right of property or rule of human conduct involved, the rule of *stare decisis* should

give way to the better rule of reason and right. In this case there is no right of property or human conduct involved. The question is one involving procedure, and the rounding out, finishing and completing of the admiralty jurisdiction of this country, making it a more perfect system, and if precedent be sought for it, following in this respect the extension by Act of Parliament of the jurisdiction of the modern English Admiralty Courts. These are more fortunate than those of our country in that the jurisdiction could be, and was amplified and extended by Acts of Parliament. Under our system it would require a constitutional amendment (a quite impossible method) of providing what is, after all, a mere matter of detail relating to admiralty jurisdiction. It being, therefore, a matter in which the legislature is unable to assist, and which, cannot be done otherwise than by this court, we are compelled to seek here for what in almost any other case we could ask for through the legislature. The legislature being powerless under the decisions of this court to enlarge the admiralty jurisdiction beyond its present scope, this court, when no hardship results from so doing, ought to liberally consider the claims of suitors who seek the jurisdiction and give them *entree* to it in every case in which reason, right and expediency demand it, and when no violence is done to the fundamental law under which the Courts of Admiralty were and are organized and maintained.

Let us examine a practical operation of an amplification of the admiralty jurisdiction, so that it would embrace cases of damage inflicted by passing vessels to wharves and bridges. If under a narrow

construction in such a case, a vessel is injured, her owner can resort to an Admiralty Court to recover his damages. The owner of the bridge cannot. If the jurisdiction is extended to embrace damages to the bridge he can. He loses nothing by being allowed to go into admiralty. The ship owner loses nothing by having him proceed there. If the bridge owner is permitted to file his libel or cross-libel in admiralty, the vessel owner finds himself in the very court into which he has a right to go, or into which he has already gone. The result would amount to this, that the bridge owner would have one additional tribunal in which he could sue to recover his damages, or could, when sued, recover by cross-libel his damages, in the same suit in which the vessel owner recovers his damages.

The rule of damages in the admiralty and common law courts is different. The libelant or plaintiff, though in fault, can, in the Admiralty Court, recover one half his damages when the defendant is also at fault, and the latter can, by cross libel, recover or offset his claim for damages as well. Under the narrow construction the hardship and injustice lies in this:

An owner of a vessel damaged by collision with a bridge, suing in admiralty, is found to have been equally at fault with the owner of the bridge. In that case the vessel owner recovers one-half his damages, amounting to, say, $1,000. The bridge owner cannot, upon a cross libel, recover any part of the damages sustained by the bridge, amounting to $100,000, because the Admiralty Court has no jurisdiction to award the damages. The bridge owner must, therefore, pay the decree of the vessel

owner, and pursue his remedy for damages to the bridge, in a common law court. *Here he cannot recover because he has been guilty of negligence,* and although the vessel owner is equally at fault for the collision, and therefore could not have recovered had he brought his action in the common law court, still he recovers, notwithstanding this, one-half of his damages through the decree of the Admiralty Court, while the bridge owner, denied a hearing in admiralty, and defeated at common law, not alone bears all his own damages, but also one-half of those sustained by the vessel owner, which the Admiralty Court, has compelled him to pay by its decree.

Suppose the damages to the vessel amount to $150,000 in the case above cited, instead of $1,000, if both parties were jointly at fault, the vessel owner would recover on half of his damages, or $75,000. The bridge owner would be compelled to pay the decree, and at the same time be unable to obtain a decree for one-half his damages. If, after that, he went to a common law court, he would be defeated there because of his contributary negligence, and the result would be that he would pay the vessel owner $75,000, and bear all his own damages.

This nullifies completely the rule of damages in admiralty when the collision is one between a fixed object and the vessel, in all cases where there is mutual fault. We know of no remedy which the bridge owner could pursue, and under which he could recover the one-half of the damages to the bridge that would have been awarded him in admiralty had he been allowed to prove the damages.

We find, then, that if the court narrows the jurisdiction and does not entertain the claim for dam-

ages to the bridge or wharf, the bridge and wharf owner is deprived of a right of property which, in justice and equity, he is entitled to when he is forced into a Court of Admiralty by the vessel owner and compelled to litigate there the question of liability for the collision between the steamer and the bridge or wharf.

This property right arises out of the rule of damages which prevails in admiralty. It is a fixed rule and right under the law. Long established, well known and more nearly just than the common law rule, and he is placed in this position, not by any act of his, but because the vessel owner sues him in admiralty and compels him to go there. If the vessel owner had pursued the bridge owner at common law, and both parties were at fault, he could not recover at all, and each party would practically have to bear his own damages. Under a narrow construction of the jurisdiction the bridge owner must not alone bear all his damages, but one-half of those of the vessel owner whenever both are found to have been at fault. This is unjust and unreasonable.

Who can complain if the bridge owner be permitted to come into admiralty to litigate his cause of action? The only other person interested is the vessel owner. If objection is made, it must come from him. The general public is not interested; but how can the vessel owner be heard to complain, when the court is asked to give to the bridge owner the same rights that the vessel owner claims and obtains for himself. Why should not both parties have equal rights in a court into which one of the parties forces the other? Yet, up to now, the admiralty hearing is denied to the libelant for his damages

sustained by the bridge, while the vessel owners' damages can be decreed to him, even when both are jointly at fault for causing the damage. In this way injustice is done to the bridge owner, because the greater privilege that is accorded the vessel owner, who has access to the Admiralty Court, and this is denied the bridge owner. This works injustice. Any system of jurisprudence that does that, is imperfect and wrong, and ought to be changed, and when this can be done, so that there are equal rights to both parties without injury, hardship or even inconvenience to anyone concerned, it ought to be done and we believe it to be the duty of the court to do it. The fact that the Admiralty Court already has jurisdiction when it is sought by the vessel owner, and can, therefore, hear and determine the controversy, relieves the court of all embarrassment which would arise were the cause of action one which was strange to the admiralty.

We believe the decision of the court in the case of the *Blackheath* warrants the prevailing opinion of the Admiralty Bar of the country that the *Plymouth* case does not mean that all claims for damages sustained by objects on the land or affixed to it, shall be excluded from the realm of the admiralty, even when not aids to navigation. The only sound rule is that all damages done by a ship should be within the admiralty jurisdiction. It is the broader, more reasonable and more practical and sensible rule. It is much more just and equitable, as well as reasonable, especially when the collision itself is already within the jurisdiction and this is sought by the damaged vessel owner.

To confine the jurisdiction so as to exclude the

damages of the bridge and wharf owner can serve no useful purpose. It must necessarily be unsatisfactory to one side of the controversy without (as is usual in decisions) even benefiting the other side. The vessel owner has no special advantage in excluding the bridge owners' claim for damages from the jurisdiction. He may compel him to defend a second suit instituted by the bridge owner, after the Admiralty Court has heard and decided the controversy. Such a condition is an anomoly in the law. We can find no precedent for it in the common law or in chancery courts. Courts of Admiralty are equity courts rather than courts of law. The practice and procedure there resembles more nearly that of the court of chancery. The pleadings are as plain and as simple as those found in equity, and if equity principles are to govern how can one party be denied the same rights in the court that are given to the other, when they arise out of the determination of the controversy which the court is called upon to hear and decide? No such practice prevails in equity. As this court say in the case of *North Chicago Roll Mill Co.* v. *St. L. Ore & S. Co.*, 152 U. S., 596:

> "Cross demands and counterclaims, whether arising out of the same or wholly disconnected transactions, and whether liquidated or unliquidated, may be enforced, by way of set-off, whenever the circumstances are such as to warrant the interference of equity to prevent wrong and injustice.
>
> "Again, it is well established that equity will entertain jurisdiction, and afford relief against the collection of a judgment, where, in justice and good conscience, it ought not to be enforced, as where there is a meritorious, equit-

able defense thereto, which could not have been set up at law, or which the party was without fault or negligence, prevented from interposing. Illustrations of these general principles are found in the cases of *Leeds* v. *Insurance Co.*, 6 Wheat., 565; *Scammon* v. *Kimball*, 92 U. S., 362; *Crimm* v. *Handley*, 94 U. S., 652; *Embry* v. *Palmer*, 107 U. S., 3; 2 Sup. Ct., 25; *Knox Co.* v. *Harshman*, 133 U. S., 154; 10 Sup. Ct., 257; *Marshall* v. *Holmes*, 141 U. S., 589; 12 Sup. Ct., 62.

"The adjustment of demands by counterclaim or set-off, rather than by independent suit, is favored and encouraged by the law, to avoid circuity of action and injustice." *Railroad Co.* v. *Smith*, 21 Wall., 255.

As to the rule of *stare decisis*, if it should be sought to be invoked in this case against the jurisdiction, we desire to quote the language of Chancellor Kent in 1 Kent Com., 477:

> "Even a series of decisions are not always conclusive evidence of what is law; and the revision of a decision very often resolves itself into a mere question of expediency, depending upon the consideration of the importance of certainty in the rule, and the extent of property to be affected by a change of it. Again, he says: 'It is probable that the records of many of the courts in this country are replete with hasty and crude decisions; and such cases ought to be examined without fear, and revised without reluctance, rather than to have the character of our law impaired, and the beauty and harmony of the system destroyed by the perpetuity of error.'"

It is also justly said by Senator Platt in *Yates* v. *Lansing*, 9 Johnson, 415; 6 Am. Dec., 290, that "the decisions of courts are not the law; they are only evidence of the law."

In the case of *Henry* v. *Bank of Salina*, 5 Hill, 535, it is said:

> "I hope we shall consider what a decision really is and treat it accordingly; not as the law, nor as giving the law, but simply as evidence of the law, and not conclusive evidence, but only *prima facie* evidence of what the law is."

In *Bright* v. *Sutton*, 12 Eng. L. & Eq., 15, the Lord Chancellor of England said to the House of Lords:

> "You are not bound by any rule of law which you could lay down if, upon a subsequent occasion, you should find reason to differ from that rule; that is, like every court of justice (and to regard this as a court of justice), it is inherent in the nature of every court of justice that it should have liberty to correct any error into which it may have fallen."

In *Hart* v. *Burnett*, 15 Cal., 530, page 607, the court say:

> "Consistency purchased by adherence to decisions at the sacrifice of sound principle is dearly bought. But we deem it unnecessary to further pursue this discussion, for we know quite well that there is not a court in England or America that has not corrected erroneous departures from the principles of justice by overthrowing previous decisions. * * * Much as we respect the principle of *stare decisis*, we cannot yield to it when to yield is to overthrow principle and do injustice. Reluctant as we are to depart from former decisions, we cannot yield to them if, in yielding, we perpetuate error and sacrifice principle. We have thought it wisest to overrule outright rather than to evade, as is often done, by an attempt to distinguish where distinction there is none. We

have preferred the censure that sometimes falls upon us rather than undertake to distinguish, and thus make 'confusion worse confounded,' where there is no room to limit or distinguish."

The Supreme Court of Indiana, in the case of *Board of Com.* v. *Allman*, 142 Ind., 572, said:

> "While the rule of *stare decisis* is a salutary one, yet it is not to be applied in all cases. If a decision or series of decisions are clearly incorrect, either through a mistaken conception of the law, or through a misapplication of the law to the facts, *and no injurious results would follow from their overthrow, and especially if they were injurious or unjust in their operation, it is the duty of the court to overrule such cases.* 6 Alb. L. J., 329; *Church* v. *Brown*, 21 N. Y., 335. But if a principle of law, doubtful in its character or uncertain in the subject matter of its application, has been settled by a series of decisions, until it has become an established rule of property or the basis of contracts, it should not be overthrown except from the most urgent considerations of public policy. *Hines* v. *Driver*, 89 Ind., 339; *Grubbs* v. *State*, 24 Ind., 295; *Harrow* v. *Myers*, 29 Ind., 469; *Rockhill* v. *Nelson*, 24 Ind., 422, 424. To that extent only are courts ordinarily restrained from correcting mistakes which they may have made. It must not be understood, however, that a previous line of decisions affecting even property rights can in no case be overthrown. If the evil resulting from the principle so established is greater than the mischief to the community could possibly be from a disregard of former adjudications, they should be overruled, and a new rule declared. *Boon* v. *Bowers*, 30 Miss., 246; 64 Am. Dec., 159."

The Genesee Chief, 12 How., 443:

In this case Chief Justice Taney delivered the opinion of the court, and the question involved was

as to whether the admiralty jurisdiction should be extended to the Great Lakes. The court, after reviewing the importance of the lakes, said:

> "Hostile fleets have encountered on them and prizes have been made; and every reason which existed for the grant of admiralty jurisdiction to the general government on the Atlantic, applies with equal force to the lakes. There is equal necessity for the instance and the prize power of the Admiralty Court to administer international law, and if the one cannot be abolished neither can the other."

The court disregarded the dogma restricting the admiralty jurisdiction to tide waters borrowed from the jurisdiction of England, where all public waters, with but few small and unimportant exceptions, were of this description, as inapplicable to this country, differing in this respect, so widely in its physical features that it ought to be disregarded as unreasonable and fallacious. The court was not insensible to the previous decision in the case of *The Thomas J.*, 10 Wheat., 428, which limited the admiralty jurisdiction to tide waters, and as to this case observed that it

> "did not decide any question of property, or lay down any rule by which the right of property should be determined. If it had, we should have felt ourselves bound to follow it, notwithstanding the opinion we have expressed. * * *
>
> "In such a case *stare decisis* is the safe and established rule of judicial policy, and should always be adhered to. * * * But the decision referred to has no relation to the rights of property. It was a question of jurisdiction only, and the judgment we give can disturb no right of property nor interfere with any contracts heretofore made. And as we are con-

> vinced that the former decision was founded in error, and that the error, if not corrected, must produce serious public inconvenience and loss, it becomes our duty not to perpetuate it."

and this brings us to the history of the original locality test in admiralty cases in this country.

The test of admiralty jurisdiction as to locality in cases of both contracts and torts, originally was the tide. The Admiralty Court had no jurisdiction of contracts relating to vessels that plied in waters where the tide did not ebb and flow. No tort or injury that arose on waters above the ebb and flow of the tide were cognizable in admiralty no matter what the character of the ship was, where she was from, or what she was engaged in doing.

The Thos. Jefferson, 10th Wheat., 424, decided in 1825:

It is here held that wages of seamen earned on a steamer plying between ports in the States of Kentucky and Missouri were not within the jurisdiction of the Admiralty Court.

Peyroux v. *Howard*, 7th Pet., 324, decided in 1833:

It was held that a lien for repairs could be enforced because the vessel plied on waters in which there was a tide.

Orleans v. *Phoebus*, 11 Pet., 175, decided in 1837:

It was held that a libel for partition filed by one of the owners of a vessel was not within the jurisdiction of the Admiralty Court because the steamer was solely engaged in river navigation above the tide.

The tide was the test up to the passage of the Act

of 1845, which extended the jurisdiction in admiralty to the waters of the Great Lakes.

The important case after the passage of that act was the case of *The Genesee Chief*, 12 How., 443, decided in 1851, and it was there held that the admiralty had jurisdiction of a collision which occurred on Lake Ontario, and the Act of 1845 was held to be an enabling act and a grant of jurisdiction over waters without tide.

This was the beginning. Then followed *Fretz* v. *Bull*, 12 How., 466, in which it was held that a collision in the Mississippi river above the tide was within the jurisdiction.

Then *The Magnolia*, 20 How., 296, in which a collision in the Alabama river was brought within the jurisdiction.

Then *Nelson* v. *Leland*, 22 How., 296. A collision on the Yazoo river was brought in.

The Eagle, 8 Wall., 15. A collision in Canadian waters was held to be within the jurisdiction. In this case the right was based upon the Judiciary Act of 1789, and not on the Act of 1845, and this Act was held not to have been an enabling act and was therefore of no validity.

We see, therefore, that reason and expediency, without legislative declaration, triumphed over the tide rule which once was as authoritative, if not more so, than was any rule which could be formulated under the case of *The Plymouth*.

The court, however, held that under the original grant of the Act of 1789 the admiralty jurisdiction embraced both torts and contracts which arose on waters above the ebb and flow of the tide. We now ask that the case of *The Plymouth* be not permitted

to stand in the way of the extension of the admiralty jurisdiction under the original grant to cases of damage done by a ship, as provided by the Merchants' Shipping Act of England, and in making such a decision no more violence will be done to the provisions of the Act by extending the jurisdiction, than was done to that Act by extending the jurisdiction to waters where the tide did not ebb and flow. In fact, the tidal rule seemed to be one which was perfectly intrenched in England and in this country, and for more than fifty years was the undisputed rule and test in determining the question of jurisdiction in admiralty.

The *Plymouth* case was decided in 1866, and it has been considered (but with some doubt) as furnishing a rule which will exclude jurisdiction when the damage is done to a structure on land or fixed to the land, and not maintained as an aid to navigation. It was made without the support of a single decision in this country, either in the District or Circuit Courts of the United States. We can find no decisions in either of these courts upon the point.

In 1866, when this case was decided, there were not as many bridges as there are now. There were not as many steamers as there are now. Much of the loading and unloading in many of the ports was done while the vessels were at anchor, and was carried on by boats or lighters. The importance of wharfs and docks in navigable waterways and their use has greatly increased since the decision of that case, and now nearly all cargoes are taken on or discharged while the ship is alongside of a wharf, and in this way the expense of handling cargoes is greatly reduced and expedited. The change in the

character of the implements of commerce from the lighter to the wharf, the increased size and number of steam vessels, and the possible danger to structures on land by reason of the vessels coming to and going from wharves, creates an expediency and necessity, under present day conditions, for a different rule than prevailed forty years ago. We contend, therefore, that under the original grant of the admiralty jurisdiction we are warranted in asking the court to so construe this grant and the decisions under it as to embrace all cases of,

First: Damage done by any ship while navigating the navigable waterways of the United States.

Second: That this shall include all damage done by a ship to lighthouses, wharves, piers, breakwaters, docks, bridges and every necessary part of them.

Third: That locality shall be the test in all cases of injury done by a ship, without regard to whether the injury happens on land or to objects fixed to the land.

Respectfully submitted.

CHARLES E. KREMER,
JOHN A. MURPHY,
Proctors for Appellant.

December, 1907.

THE TROY.[1]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WISCONSIN.

No. 232. Submitted December 20, 1907.—Decided February 24, 1908.

Cleveland Terminal Co. v. *Steamship Co.*, *ante*, p. 316, followed to effect that the admiralty does not have jurisdiction of a claim for damages to a bridge which, although in navigable waters, is so connected with the land that it immediately concerns commerce on land.

THE facts are stated in the opinion.

[1] Docket title, No. 232, Duluth & Superior Bridge Company v. Steamer "Troy," her Boilers, Engines, etc.

Mr. Charles E. Kremer and *Mr. John A. Murphy* for appellant.

Mr. Harvey D. Goulder, Mr. Frank S. Masten, Mr. H. A. Kelley, Mr. H. R. Spencer and *Mr. S. H. Holding* for appellee.

MR. CHIEF JUSTICE FULLER delivered the opinion of the court.

The Duluth and Superior Bridge Company owned and operated a bridge between the cities of Duluth, Minnesota, and Superior, Wisconsin, over the St. Louis River, a navigable stream. The bridge was equipped with a swinging span, supported on a turntable resting on a base of stone and piles driven into the bottom of the river, leaving a space for the passage of vessels on either side of the supporting structure. When closed its ends rested upon permanent abutments, forming a passageway over the stream for street cars and foot passengers, and when opened allowing the passage of the largest lake steamers.

On August 11, 1906, the merchant steamer Troy, inbound, struck the center pier protection and glanced into the draw of the bridge, inflicting heavy damage. The bridge company filed a libel against the Troy in the District Court for the Western District of Wisconsin in admiralty, claiming large damages. The Western Transit Company, owner of the Troy, filed exceptions to the libel, as follows:

"1st. That it appears from the averments of the libel that the bridge alleged to have been injured was a structure on land, for purposes of land travel and convenience exclusively, not erected, maintained or operated in any sense or in any degree in aid of navigation, but, on the contrary, an obstruction and impediment to the navigation of a public navigable water channel and highway, a part of the public waters of the United States, then and there navigable to ships engaged in commerce and navigation.

"2d. That whatever of damage came to the bridge occurred

on land, and no part of the same occurred or was suffered on water in place or manner within the jurisdiction of an admiralty court of the United States.

"3d. That the claim of damage propounded in the libel fails to show a case within the admiralty jurisdiction of this honorable court, according to the grant of such jurisdiction in the Constitution of the United States and the course and practice in admiralty courts of the United States."

The court sustained the exceptions and dismissed the libel with costs, whereupon the case was brought by appeal to this court, the question of jurisdiction being certified.

The Cleveland Terminal & Valley Railroad Company v. *The Cleveland Steamship Company, ante*, p. 316, just decided, involved substantially the same questions of jurisdiction that are involved in this case. There the steamer Reis collided with the center protection of a bridge located in the navigable channel of the Cuyahoga River and injured it, and at the same time the abutment or shore end of the bridge, and the wharf or dock in the vicinity. In that case the bridge itself was not injured, while in this case the center protection and bridge were both injured. The views we have expressed in that case must govern the disposition of this case, and the

Decree is affirmed.